

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Alan Kachalsky, Christina Nikolov, Eric Detmer, :
Johnnie Nance, Anna Marcucci-Nance, :
and Second Amendment Foundation, Inc., :
: Plaintiffs, : Civil Action Number:
-against- : 10-cv-5413
: :
Susan Cacace, Jeffrey A. Cohen, :
Albert Lorenzo, Robert K. Holdman :
and County of Westchester, :
: Defendants. :
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DECLARATION OF THE HONORABLE SUSAN CACACE

The undersigned declares under penalty of perjury and in accordance with 28 U.S.C. §1746 as follows:

1. I am a Defendant herein and submit this declaration in support of the State Defendants' Cross-Motion for Summary Judgment and in opposition to the Plaintiffs' Motion for Summary Judgment based on my personal knowledge.
2. I am a County Court judge for Westchester. I have been on the bench for 5 years. Pursuant to New York State Penal Law § 265.00 (10) one of my duties as a county judge is to act as a Westchester County handgun licensing officer. As such, I am familiar with the practices and procedures regarding the application for, and issuance of, pistol, or handgun, permits in Westchester. I rendered a Decision and Order dated October 8, 2008 denying the application of plaintiff, Alan Kachalsky for a "full carry" pistol license.

3. In my role as a handgun licensing officer, I am presented with a packet of materials, including the application and the applicant's supporting documents; the results of any and all criminal and mental health background checks performed by the Department of Public Safety for Westchester, who, pursuant to Penal Law § 400.00 (4) is charged with investigating an applicant's background and application statements; and the recommendations of the various levels of the Department of Public Safety. The materials I reviewed in connection with Kachalsky's application are annexed to the Affirmation of Anthony J. Tomari, sworn to January 26, 2011, submitted in support of the State Defendants' Cross-Motion for Summary Judgment ("Tomari Aff.") as Exhibit F.

4. After reviewing the materials related to Mr. Kachalsky's application, I issued a decision and order denying Mr. Kachalsky's application, dated October 8, 2008, noting "the State has a substantial and legitimate interest and grave responsibility for ensuring the safety of the general public" and that licensing officers, such as myself, "are vested with broad discretion in determining applications for an unrestricted pistol license and are required to exercise their judgment on the basis of a total evaluation of relevant factors". A copy of my October 8, 2008 Order and Decision is annexed to the Tomari Aff. as Exhibit K.

5. I denied Mr. Kachalsky's application for an unrestricted, full carry pistol permit, as he failed to state "any facts which would demonstrate a need for self protection distinguishable from that of the general public", and because "based upon all the facts and circumstances of this application, it is my opinion that proper cause does not exist for the issuance of an unrestricted 'full carry' pistol license" to Mr. Kachalsky.

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7. Rendering the October 8, 2008 Decision and Order was my only involvement in this controversy.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 18, 2011
White Plains, New York


Susan Cacace